

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

On July 20, 2017, defendant filed a Motion for Modification of Conditions of Release. Therein he requested permission to travel to Allen, South Dakota, to participate in a Sun Dance. He also requested that the court modify his release conditions to permit him to reside with a friend in Cheyenne, Wyoming, pending final disposition of this matter.

On August 4, 2017, the court granted defendant's motion in part. In so doing it authorized defendant to travel to Allen, South Dakota, from August 6-13, 2017. It also modified the travel restrictions it had previously imposed on defendant so that defendant could travel to the Indian Health Service's facility in Fort Yates, North Dakota. Finally, it advised that it was taking defendant's request to change his residence to Cheyenne, Wyoming, under advisement pending a report by Pretrial Service on his proposed residence and response by the Government.

The Government has yet to file a response to Markus' Motion for Modification of Conditions of Release. See D.N.D. Crim. L.R. 47.1 (A) (giving the adverse party 14 days after service of a motion and supporting memorandum to serve and file a response) and 47.1(E) ("An adverse party's failure to serve and file a response to a motion may be deemed an admission that the motion is well taken.").

Given the Government's silence with respect to defendant's proposed change of address and in recognition of defendant's performance to date while on release, the court **GRANTS** defendant's request to change his residence to Wyoming. Defendant's release conditions shall be modified as follows:

- (1) Defendant must not violate federal, state, tribal, or local laws while on release.
- (2) Defendant must advise the Pretrial Services Officer and defense counsel in writing before making any change in address or telephone number.
- (3) Defendant must appear in court as required and must surrender to serve any sentence imposed.
- (4) Defendant shall report to the Pretrial Services Officer at such times and in such manner as designated by the Officer.
- (5) Defendant shall refrain from: any use of alcohol; any use or possession of a narcotic drug and other controlled substances defined in 21 U.S.C. § 802 or state statute, unless prescribed by a licensed medical practitioner; and any use of inhalants. Defendant shall submit to drug/alcohol screening at the direction of the Pretrial Services Officer to verify compliance. Failure or refusal to submit to testing or tampering with the collection process or specimen may be considered the same as a positive test result.
- (6) Defendant shall not possess a firearm, destructive device, or other dangerous weapon.
- (7) Defendant shall not knowingly or intentionally have any direct or indirect contact with his co-defendants, except that counsel for the defendant, or counsel's agent or authorized representative, may have such contact with such person(s) as is necessary in the furtherance of the defendant's legal defense.

- (8) Defendant shall reside in either Bismarck, North Dakota, or Cheyenne, Wyoming, at an address that has been approved by the Pretrial Services Officer and not change this residence without prior approval of the Pretrial Services Officer.
- (9) Defendant shall submit his person, residence, vehicle, and/or possessions to a search conducted by a Pretrial Services Officer at the request of the Pretrial Services Officer. Failure to submit to a search may be grounds for revocation of pretrial release. Defendant shall notify any other residents that the premises may be subject to searches pursuant to this condition.
- (10) Defendant shall maintain or actively seek employment. Employment must be approved by the Pretrial Services Officer.

IT IS SO ORDERED.

Dated this 8th day of September, 2017.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr., Magistrate Judge
United States District Court